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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1115

DONALD L. DUNCAN,
Petitioner

vs

STATE OF CONNECTICUT,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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SUBJECT INDEX

	Page
Jurisdiction	2
Statutes Involved	2
Questions Involved	2-4
Statement of Facts	4-5
Reasons for Granting Writ	6-8
Conclusion	9
Appendix A — Section 36-267, 36-306, 36-313, 36-265 Conn. Gen. Statutes, Rev. 1958	10-13
Appendix B —	
Draft Finding	14
Motion to Dismiss Appeal	18
Request for a Draft Finding	19-25
Motion for Permission to file a Request for Finding and Permission to Amend Draft Finding	25-26
Motion to reargue	27-28
Order extending time to file petition for writ of certiorari, 4-9-63	29
Order extending time to file petition for writ of certiorari, 5-13-63	30

INDEX TO AUTHORITIES CITED

	Page
Snyder vs *Mass*, 291 U.S. 97	6
Powell vs *Alabama* 287 U.S. 45	6
American Surety vs *Baldwin*, 287 U.S. 156	6
George Moore Ice Cream Co. vs *Rose*, 289 U.S. 373	6
Brinkerholf-Faris Trust Savings Co. vs *Hill*, 281 U.S. 673	7
Hebert vs *Louisiana*, 272 U.S. 312	7
Persing vs *Reno Stock Brokerage Company*, 96 P. 1051	7
Darmstatter vs *City Council of Passaic*, 79A 545, 81 N.J. Law, 162	7
Trustees of the Village of Saratoga Springs vs *Saratoga Gas Electric Light Power Company 107* N.Y.S. 341, 122 Appellate Division 203, order reversed 83 N.E. 693, 191 N.Y. 123	8
Ives vs *South Buffalo Ry Co.*, 94 N.E. 431, 201 N.Y. 271	8
Williams vs *North Carolina*, 325 U.S. 226	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. .....

DONALD L. DUNCAN,
Petitioner

vs

STATE OF CONNECTICUT,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Petitioner prays that a writ of certiorari issue to review the judgment of the Connecticut Supreme Court entered in the above entitled cause on December 4, 1962.

The Petitioner petitions for a writ of certiorari to review an order of the Connecticut Supreme Court entered on December 4th 1962, dismissing an appeal from the Superior Court of the State of Connecticut entered on June 27, 1962, which dismissal was entered without an opinion from said Court.

JURISDICTION

The Judgment of the Connecticut Supreme Court was entered on December 4th, 1962. Jurisdiction of this Court is invoked pursuant to 28 U. S. C. section 1257 (2), which permits this Court to review cases in which there is a substantial Federal question.

STATUTES INVOLVED

The statutory provisions involved are sections 36-306 and 36-313 of the General Statutes of the State of Connecticut Revision of 1958, and sections 36-267 of the General Statutes, Revision of 1958, which is set forth in Appendix A along with section 36-265 defining the language in the above sections.

QUESTIONS INVOLVED

A

Whether the petitioner was deprived of due process of law and the equal protection of the laws in violation of Section I Article 14 of the Amendments to the Constitution of the United States by:

(a) The refusal of the trial court Judge to disqualify himself as trier of the cause in view of the claim of prejudice arising from proceedings before trial on May 17, 1962.

(b) The decision of the trial court that Sections 36-267, 36-306 and 36-313 are Constitutional as applied to the evidence in the cause of the petitioner; and

(c) The refusal of the Connecticut Supreme Court of Errors to hear and decide on its substantive merits the appeal of the petitioner from the Judgment of the Superior

Court, thereby leaving in effect as a final judgment the finding of guilty made by the Superior Court, which proposes to execute the penalties imposed as above stated.

B

Whether Sections 36-267 and 36-306 and 36-313 of the Connecticut General Statutes, in their enactment and enforcement, are repugnant to the due process clause of Amendment 14, Article I of the Constitution of the United States in failing to prescribe adequate standards, and in failing to define criminal conduct with sufficient definiteness and clarity.

C

Whether the judgment of the Superior Court, in failing to specify particular portion of the Statutes the Petitioner was adjudged to have transgressed, contravened the due process clause and the equal protection of the laws clause of the Constitution of the United States Amendment 14, Section I.

D

Whether the Supreme Court, in dismissing the appeal from the Superior Court; deprived the petitioner of a right to his day in Court and impared his freedom, all of which are repugnant to the due process clause and the equal protection of the law clause of the Constitution of the United States, Amendment 14, Section I.

E

Whether the Appellant was guilty as charged.

On April 9, 1963 Associate Justice of the United States Supreme Court John M. Harlan extended the time through May 13, 1963, for filing Petition for Writ of Certiorari.

On May 13, 1963 Associate Justice John M. Harlan extended the time through May 20, 1963 for filing Petition for Writ of Certiorari.

STATEMENT OF FACTS

Appellant was arraigned on a warrant charging him with the crime of Selling or Offering for Sale Securities as a Broker, Dealer or Salesman without having registered with the Bank Commissioner of the State of Connecticut, in violation of Section 36-267 of the General Statutes of Connecticut Revision of 1958, and was sentenced on this Count to one year confinemet to the State Jail and fined $1,000.00 pursuant to Section 36-313 of the General Statutes of the State of Connecticut, Revision of 1958;

And the Petitioner was further arraigned and convicted on a Second Count of the crime of Selling or Offering for Sale Oil or Mining Securities without having received permission for the sale of such securities from the State Bank Commissioner in violation of Section 36-306 of said Statute, and was sentenced on this Second Count to one year confinement in the State Jail and fined $1,000.00 pursuant to Section 36-313 of such Statutes; said sentences of confinement in the State Jail to be served concurrently.

Said petitioner, a resident of New York City, did solicit and sell oil leases located in the State of New Mexico, confining said solicitation and sales to one individual within the State or Connecticut. Section 36-265 of the General Statutes of the State of Connecticut, Revision 1958, defines sales, stating it must be an attempt to publicly dispose of a security. See Appendix A, 36-265.

The Petitioner was tried before the Honorable Thomas F. Troland, Judge of the Superior Court of the State of Connecticut, sitting without a Jury on June 26, 1962. On June 27, 1962 the Petitioner was found guilty of both counts and appealed therefrom from the judgment therein to the Supreme Court of the State of Connecticut.

In pursuance thereof the Petitioner filed on the 19th day of October, 1962, a draft finding, "Appendix B." and on October 25, 1962 the Respondent made a motion to dismiss said appeal, "Appendix B.", which motion to dismiss was granted on Dec. 1, 1962.

On the 26th day of November, 1962, the Petitioner made a request for a Draft Finding to the Superior Court for Hartford County, and on November 28, 1962, made a motion for permission to File a Request for Finding and Permission to Amend the Draft Finding, all of which appears in Appendix B, along with a Motion to Reargue, which motion was denied.

All of the above attempted by statute to place a simple real estate transaction involving only one individual in the category of a security transaction discriminating this type of sale from sales normally carried on by real estate agents by calling this sale a security transaction requiring a security license.

Petitioner further states that he was deprived of pursuing this matter further by appeal to the Connecticut Supreme Court when said Court unjustifiably dismissed said appeal, although good cause appeared for the granting of the same, thereby placing the liberty of the petitioner in jeopardy by the enforcement of the Superior Court judgment.

REASONS FOR GRANTING WRIT

During the trial the Petitioner raised the question of the Constitutionality of the Statute involved. Thereafter the right to proceed further on appeal was taken away from the Petitioner and said Appeal was dismissed.

In the case of *Snyder* vs *Mass.* 291 U.S. 97, the Court held

> "What may not be taken away under the 14th Amendment is notice of the charge and an adequate opportunity to be heard in defense of it."

In *Powell* vs *Alabama*, 287 U.S. 45, the Court held

> "Notice and hearing, together with a legally competent tribunal having jurisdiction of the case constitute basic elements of the constitutional requirements of due process of law."

In the present instance, the Petitioner was denied the right to proceed with his hearing in the Supreme Court of the State of Connecticut.

In the case of *American Surety* vs *Baldwin*, 287 U.S. 156 the Court said

> "A due process does not require that opportunity be given before entry of judgment to present a defense, but it is enough that it may be presented on appeal from the judgment."

This was denied in the present case.

In the *George Moore Ice Cream Company* vs *Rose*, 289 U.S. 373, the Court held that

> "Due process requires that there be an opportunity to present every available defense but it need not be before the entry of judgment."

In *Brinkerholt-Faris Trust Savings Company* vs *Hill*, 281 U.S. 673, the Court held

> "A violation of the due process clause may be accomplished by the state judiciary in the course of construing an otherwise valid state statute."

The Court went on further to state that

> "The Federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."

In *Hebert* vs *Louisiana*, 272 U.S. 312, the Court said

> "The 14th Amendment to the Constitution of the United States requires that state action shall be consistent with the fundamental principles of liberty and justice which lie at the basis of all our civil and political institutions."

In *Persing* vs *Reno Stock Brokerage Company*, 96 P. 1051, the Court held that

> "Due process of law within the Constitution, Article 1, Section 8, declaring that no person shall be deprived of life, liberty or property without due process of law, not only requires that a party shall be properly brought into Court, but that he shall have the opportunity in Court to establish any facts which according to the usages of the common law or the provisions of the Constitution will be a protection to himself or property."

In *Darmstatter* vs *City Council of Passaic*, 79 A. 545, 81 N.J. Law 162, the Court said

> "Due process is a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."

In the *Trustees of the Village of Saratoga Springs* vs *Saratoga Gas Electric Light Power Company*, 107 N.Y.S. 341, 122 Appellate Division 203, order reversed 83 N. E. 693, 191 N.Y. 123, the Court said

> "To make effective the constitutional guarantee of due process of law one must have the right to appeal to the Court whenever it is claimed that the constitutional rights are invaded."

This privilege was denied the Petitioner herein when the Motion to Dismiss by the Respondent was granted.

In *Ives* vs *South Buffalo Ry Co.* 94 N.E. 431, 201 N.Y. 271, the Court said

> "Process of law in its broad sense means law in its regular administration in courts of justice which is but another way of saying that every man's life, liberty and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when the constitution was adopted."

In *Williams* vs *North Carolina*, 325 U.S. 226, the Court held that

> "State courts cannot avoid review by the United States Supreme Court of their disposition of a constitutional claim by casting it in the form of an unreviewable finding of fact."

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Respectfully Submitted.
STANLEY KREUTZER
Attorney for Petitioner

May 16, 1963.

APPENDIX A

Conn. General Statutes, Rev. 1958

Section 36-267 reads: "Registration required of brokers, dealers and salesmen."

"No person, unless exempted, shall sell or offer for sale securities, within or from this state, as a broker, dealer or salesman unless registered as such by the commissioner as provided in this chapter. Persons organized in this state and operated principally for the purpose of promoting the industrial or commercial activity of this state or any political subdivison thereof shall be required to register as salesmen only such number of principal officers or salesmen as the commissioner may determine when such person sells or offers for sale his securities." (1949 Rev. s5973; 1949, Supp. s. 2772d; 1959, PA. 686, s5.)

Section 36-306 reads: "Permit required."

"No person shall sell or offer for sale within or from this state any mining or oil securities unless the issuer of such securities has received permission for the sale of such securities from the commissioner as provided in this chapter. (1949 Rev. s.6011.)

Section 36-313 reads: "General penalty"

"Any person who violates any provision of this chapter, for the violation of which no other penalty is provided, shall be fined not more than two thousand dollars or imprisoned not more than two years or both. (1949 Rev. s. 6017.)

Section 36-265 reads: "Definitions."

"In this chapter, unless the context or subject matter otherwise requires:

(a) "Person" includes an individual, a partnership, a joint stock company, a corporation, a common law trust, an agency or any other association.

(b) "Security" or "securities" means any stock, bond, note, debenture, evidences of indebtedness, certificates of interest or participation in any profit-sharing syndicate agreement, certificates of interest or participation in any syndicate agreement, investment contract, certificates or evidences of interest in any oil, gas or mining lease, certificates of evidences of interest in any oil, gas or mining royalty, certificates or evidences of interest in any property represented to contain, or to be a prospect for, oil, gas or minerals and interests in or under such lands and royalties therefrom, interim certificates or receipts or other instruments commonly known as securities.

(c) "Broker" or "dealer" includes any person, other than a salesman, who in this state shall engage, either for all or part of his time, directly or through an agent or agents, in the business of selling or offering for sale, or soliciting subscriptions to, or orders for, or undertaking to dispose of, or to invite offers for, inquiries about, or shall solicit an offer to buy, purchase or otherwise acquire a security or securities, or shall deal in any manner in any security or securities, within or from this state, whether issued by himself or another person, or in the business of purchasing or otherwise acquiring such securities from another with the purpose of reselling them, or of offering them for sale to the public, for a compensation or commission or at a profit, or a corporation publicly selling or offering for sale its security or securities.

(d) "Salesman" includes every person employed, appointed or authorized by a broker to sell in any manner or offer for sale, within this state, any security or securities to any person.

(e) "Sell" or "offer for sale" includes every disposition or attempt to publicly dispose of a security or interest in a security for any consideration and as a business, or a corporation publicly selling or offering for sale its security or securities. Any security given or delivered with or on account of any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sell" or "offer for sale" also includes an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell, directly or by agent, circular, letter, advertisement or otherwise; provided nothing herein shall limit or diminish the full meaning of the term "sell" or the term "offer for sale" as construed by the courts of this state.

(f) "Investment counsel" includes any person who, in this state, engages in the business of advising others, either directly or by mail or through publications or writings, as to the value of specific securities or as to the advisability of investing in, purchasing or selling such securities, for a compensation or commission at a profit.

(g) "Agent" includes any person employed, appointed or authorized by an investment counsel to solicit business for such investment counsel within or from this state.

(h) "Mining or oil security" or "mining or oil securities" includes (1) stocks, bonds, notes, debentures, evidences of indebtedness, certificates or evidences of interest or participation, lease or lease rights, investment contracts, certificates or evidences of interest in any corporation producing or proposing to produce oil, gas or minerals; (2) stocks, bonds, notes, debentures, evidences of indebtedness, certificates or evidences of interest or participation, lease or lease rights, investment contracts in any oil, gas or mining lease or royalty trust; (3) certificates or evidences of interest in any property represented to contain or to be a prospect for oil, gas or minerals, and interests in or under such lands or other instruments commonly known as securities.

(i) "Issuer" means and includes every person who has issued, or proposes to or shall hereafter issue, any mining or oil security.

(j) "Commissioner" includes the bank commissioner, the deputy bank commissioner or any person appointed or designated by said bank commissioner to administer this chapter.

APPENDIX B

No. 21911

STATE OF CONNECTICUT

vs

DONALD L. DUNCAN

SUPERIOR COURT
HARTFORD COUNTY
October 19, 1962

DRAFT FINDING

FIRST: The following facts are found:

1. On May 17, 1962, the accused was presented at the Superior Court before the Honorable Thomas E. Troland, Judge, by virtue of a bench warrent and information charging the defendant with selling and offering for sale within this State mining or oil securities without receiving permission for the sale of such securtities from the Bank Commissioner in violations of Sections 36-306 and 36-313 of the General Statutes of Connecticut, Revision of 1958; and in addition a Second Count was included in said information, charging the accused with failure to register as a broker, dealer or salesman; and that in New Britain on sundry dates in 1962 the accused offered, sold or offered for sale securities within the state as a broker, dealer or salesman without being registered as a broker, dealer or salesman by the Bank Commissioner in violation of Sections 36-267 and 36-313 of the General Statutes of the State of Connecticut, Revision of 1958.

2. On said May 17, 1962 at a hearing before Honorable Thomas E. Troland, Lieutenant O'Brien of the Connecticut State Police did make a statement to the Court that the accused sold a total of $72,000.00 worh of securities to

a Mr. Litchfield, and that he understood from the Land Commissioner that these oil leases were worth less than $500.00 and were auctioned off at ten cents an acre, and that these oil leases were of very little and of no value.

3. On June 22, 1962 counsel for the accused made a motion that Judge Thomas F. Troland disqualify himself from presiding at the trial of the accused because of the statements having been made to him during the proceedings of May 17, 1962, some of which did not pertain to the information contained in the warrent, and were statements highly detrimental and inadmissable on trial and might in some way affect the decision of the Court.

4. Said matter was heard on June 26th and June 27th by the Honorable Thomas F. Troland, he having denied the request to disqualify himself.

5. The defendant represented himself as being the owner of certain oil and gas leases in the State of New Mexico.

6. The defendant is neither an officer, owner, or employee of the New Mexico Oil and Gas Lease Exchange.

7. The accused did not engage as a broker or dealer directly or through an agent in the business of selling or offering for sale, or solicitating subscriptions to or orders for or undertaking to dispose of or to invite offers for or inquiries about or solicited any offer to buy, purchase or otherwise acquire a security or securities or dealt in any manner in any security or securities within the State of Connecticut, or offer them for sale to the public or publicly dispose of any securities for a compensation or commission or a profit.

8. The accused did not act as a salesman for any other broker or dealer.

9. The accused offered for sale in the State of Connecticut to only one person leases owned by the accused.

10. The accused offered to sell and did sell oil leases to one Herbert E. Litchfield, he being the only customer of the accused in the State of Connecticut.

11. The accused made no attempt to sell any oil leases in the State of Connecticut directly or indirectly to any one other than Herbert E. Litchfield.

12. The accused did not in a public manner openly, without concealment attempt to buy or sell any securities in the State of Connecticut, he having confined himself to the one individual Herbert E. Litchfield.

13. The accused was not a salesman employed, appointed or authorized by a broker to sell in any manner or offer to publicly dispose in any manner within the State any security or securities to any person.

14. The accused did not conduct a brokerage business in Connecticut.

15. The accused was not an agent for an oil and gas lease company.

16. Any interest in real estate, whether it be oil, gas or mining rights, constitute a real estate transaction and not a security transaction.

17. Section 36-265 Connecticut General Statutes, section e, defines selling or offering for sale as it appears in section c, to be sold or offered for sale includes every disposition or attempt to publicly dispose of a security or interest in a security for any consideration and as a business or corporation publicly selling or offering for sale its security or securities. Any security given or delivered with or on account of any purchase of securities or any other thing shall

be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sell" or "offer for sale" also includes an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, purchase or otherwise acquire, from the solicitor or from another, whether the solicitor acts or seeks to act as principal or as agent for the buyer or for the seller, a subscription or an offer to sell, directly or by agent, circular, letter, advertisement or otherwise; provided nothing herein shall limit or diminish the full meaning of the term "sell" or the term "offer for sale" as construed by the courts of this state.

18. That Section 36-305 Connecticut General Statutes excludes sections 36-306 to sections 36-311 from all the requirements of said sections if the mining or oil securities of an issuer, all of whose mines, plants or properties are situated within a state.

19. The statutes pertaining to the licensing of salesmen and brokers is discriminatory, inasmuch as it excludes mines or properties situated within the state.

20. Said transaction with Herbert E. Litchfield is a real estate transaction and is governed by the licensing requirements for a real estate salesman and broker.

The Defendant
By Monroe S. Gordon
His Attorney.

No. 24944

State of Connecticut

vs

Donald L. Duncan

SUPREME COURT OF ERRORS
HARTFORD, CONNECTICUT
OCTOBER 25, 1962

MOTION TO DISMISS APPEAL

The appellee respectfully moves that the appeal in the above-entitled matter be dismissed because the appellant has failed to file within the time allowed his Request for Finding stating the questions of law which he desires to have reviewed.

Respectfully submitted,
State of Connecticut
By s/George D. Stoughton
Assistant State's Attorney

December 4, 1962

The motion by the State to Dismiss the Appeal from the Superior Court in Hartford County is granted.

By the Court

Baldwin, C. J.

No. 24944

STATE OF CONNECTICUT

vs

DONALD L. DUNCAN

Superior Court
Hartford County
November 26, 1962

REQUEST FOR DRAFT FINDING

The Defendant requests, for the purpose of his appeal in the above entitled matter, a finding by the Court, and annexes hereto a draft of such findings as he deems necessary to present these questions and the questions of law which he intends to have reviewed.

The Defendant
By Monroe S. Gordon
His Attorney

No. 24944

State of Connecticut

vs

Donald L. Duncan

Superior Court
Hartford County
November 26, 1962

AMENDED DRAFT FINDING

FIRST:

The following facts are found:

1. On May 17, 1962, the accused was presented at the Superior Court before the Honorable Thomas E. Troland, Judge, by virtue of a bench warrent and information charging the defendant with selling and offering for sale within this State mining or oil securities without receiving permission for the sale of such securities from the Bank Commissioner in violation of Sections 36-306 and 36-313 of the General Statutes of Connecticut, Revision of 1958; and in addition a Second Count was included in said information charging the accused with failure to register as a broker, dealer or salesman; and that in New Britain on sundry dates in 1962 the accused offered, sold or offered for sale securities within the state as a broker, dealer or salesman without being registered as a broker, dealer or a salesman by the Bank Commissioner in violation of Sections 36-267 and 36-313 of the General Statutes of the State of Connecticut, Revision of 1958.

2. On said May 17, 1962 at a hearing before Honorable Thomas E. Troland, Lieutenant O'Brien of the Connecticut State Police did make a statement to the Court that the accused sold a total of $72,000.00 worth of securities to a Mr. Litchfield, and that he understood from the Land Commissioner that these oil leases were worth less than $500.00 and were auctioned off at ten cents an acre, and that these oil leases were of very little and of no value.

3. On June 22, 1962 counsel for the accused made a motion that Judge Thomas E. Troland disqualify himself from presiding at the trial of the accused because of the statement having been made to him during the proceedings of May 17, 1962, some of which did not pertain to the information contained in the warrant, and were statements

highly detrimental and inadmissable on trial and might in some way affect the decision of the Court."

4. Said matter was heard on June 26th and June 27th by the Honorable Thomas E. Troland, he having denied the request to disqualify himself.

5. The defendant represented himself as being the owner of certain oil and gas leases in the State of New Mexico.

6. The defendant is neither an officer, owner, or employee of the New Mexico Oil and Gas Lease Exchange.

7. The accused did not engage as a broker or dealer directly or through an agent in the business of selling or offering for sale, or soliciting subscriptions to or order for or undertaking to dispose of or to invite offers for or inquiries about or solicited any offer to buy, purchase or otherwise acquire a security or securities or dealt in any manner in any security or securities within the State of Connecticut, or offer them for sale to the public or publicly dispose of any securities for a compensation or commission or a profit.

8. The accused did not act as a salesman for any other broker or dealer.

9. The accused offered for sale in the State of Connecticut to only one person leases owned by the accused.

10. The accused offered to sell and did sell oil leases to one Herbert E. Litchfield, he being the only customer of the accused in the State of Connecticut.

11. The accused made no attempt to sell any oil leases in the State of Connecticut directly or indirectly to any one other than Herbert E. Litchfield.

12. The accused did not in a public manner openly, without concealment, attempt to buy or sell any securities in the State of Connecticut, he having confined himself to one individual Herbert E. Litchfield.

13. The accused was not a salesman employed, appointed or authorized by a broker to sell in any manner or offer to publicly dispose in any manner within the State any security or securities to any person.

14. The accused did not conduct a brokerage business in Connecticut.

15. The accused was not an agent for an oil and gas lease company.

16. Any interest in real estate, whether it be oil, gas or mining rights, constitute a real estate transaction and not a security transaction.

17. Section 36-265 Connecticut General Statutes, section c, defines selling or offering for sale as it appears in section c, to be sold or offered for sale includes every disposition or attempt to publicly dispose of a security or interest in a security for any consideration and as a business or corporation publicly selling or offering for sale its security or securities. Any security given or delivered with or on account of any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sell" or "offer for sale" also includes an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, purchase or otherwise acquire, from the solicitor or from another, whether the solicitor acts or seeks to act as principal or as agent for the buyer or for the seller, a subscription or an offer to sell, directly or by agent, circular, letter, advertisement or otherwise;

provided nothing herein shall limit or diminish the full meaning of the term "sell" or the term "offer for sale" as construed by the courts of this state.

18. That section 36-305 Connecticut General Statutes excludes sections 36-306 to sections 36-311 from the requirements of said sections if the mining or oil securities of an issuer, all of whose mines, plants or properties are situated within a state.

19. The statutes pertaining to the licensing of salesmen and brokers is discriminatory, inasmuch as it excludes mines or properties situated within the state.

20. Said transaction with Herbert E. Litchfield is a real estate transaction and is governed by the licensing requirements for a real estate salesman and broker.

SECOND

The following conclusions have been drawn from the facts:

1. That the Honorable Thomas E. Troland, Judge, should have disqualified himself from presiding at the trial because of statements made to him concerning the of the case prior to the actual trial of the case, which statements were highly detrimental and would have been inadmissable on the trial of said case.

2. The accused did not engage as a broker or dealer directly or through an agent and the business of selling or offering for sale or solicit the subscription to or orders for or undertaking to dispose of or to invite offers for or otherwise acquire a security or securities or dealt in any manner in any security or securities within the State of Connecticut.

or offered them for sale to the public or publicly dispose of any securities for a compensation or commission or a profit.

3. The accused did not act as a salesman for any broker or dealer, nor did he publicly offer for sale, nor did he attempt to publicly dispose of any securities in the State of Connecticut.

4. The accused confined his sale to only one person in the State of Connecticut, and had no other customers in the State of Connecticut.

5. The accused did not conduct a brokers business in Connecticut.

6. Said transaction with Herbert E. Litchfield is a real estate transaction and is governed by the licensing of a real estate salesman and broker.

THIRD:

The Defendant made the following claims of law respecting the judgment to be rendered upon which the Court ruled as hereinafter stated:

1. That the defendant did not engage, in the State of Connecticut, in the security business as a salesman.

2. That the defendant did not, in the State of Connecticut, engage in the brokerage business as a broker.

3. That the defendant was not guilty of violating section 36-306 and 36-315 of the General Statutes of Connecticut, Revision of 1958, or sections 36-367 and sections 313 of the General Statutes of the State of Connecticut Revision of 1958.

FOURTH:

The questions of law sought to be reviewed:

1. Whether or not the defendant is guilty under all the facts.

2. Whether or not the defendant is guilty notwithstanding the fact that the sale, offering to sell, and his clientel in the State of Connecticut, was confined to one person.

3. Whether or not the transaction comes under the statute governing the licensing of real estate salesmen and brokers.

4. Whether or not the Honorable Thomas E. Troland, Judge, erred in failing to disqualify himself after having heard facts prior to the trial, which facts normally would not be admissable in the trial of the case.

The Defendant
By Monroe S. Gordon
His Attorney

No. 21911

STATE OF CONNECTICUT
vs
DONALD L. DUNCAN

SUPERIOR COURT
HARTFORD COUNTY

NOVEMBER 28, 1962

MOTION FOR PERMISSION TO FILE A REQUEST FOR FINDING AND PERMISSION TO AMEND THE DRAFT FINDING

The appellant herein respectfully requests permission to amend the Draft Finding in order to include a Request

for a Finding, the conclusions of the Court, claims of Er made in the Trial Court with the rulings of the Court thereon, and other rulings in the trial.

The Appellant desires to amend the Draft Findings as filed by his attorney as the Draft Finding does not comply with the procedure as set forth in Section 389 of the Practice Act.

There is a serious question of law involved in the above entitled matter which should be reviewed by the Supreme Court. Should the Appellant be denied to have said question of law reviewed because of the inadequacy of his counsel, a great injustice may result to the Appellant.

The appellant has completed a Request for a Finding and a Corrected Draft Finding in accordance with the procedures set forth in Section 389, should the Court see fit to grant said application to amend.

The questions of law sought to be reviewed in the original Draft Finding, although not properly enumerated as provided for in Section 389, are included in said Draft Finding.

The Defendant
By Monroe S. Gordon
His Attorney

ORDER

The above motion having been heard on the ___ day of _____, it is hereby ORDERED That the Defendant be permitted to file his Request for Finding, permission to Amend the Draft Finding, on or before the ___ day of _____, A.D., 1962.

By the Court

_____
Clerk

No. 24911

STATE OF CONNECTICUT

vs

DONALD L. DUNCAN

SUPREME COURT
HARTFORD COUNTY

December 11, 1962

MOTION TO REARGUE

The Defendant respectfully requests permission to reargue the Court's Decision of December 10, 1962, dismissing the apeal in the above entitled action, for the following reasons:-

1. On November 29, 1962 the Defendant filed with the Clerk of the Superior Court a Motion for Permission to file a Request for Finding and Permission to Amend the Draft Finding in order to comply with the procedure as set forth in Section 389 of the Practice Act.

2. Said motion was pending before the Superior Court on December 4th, 1962, when a hearing was held before the Supreme Court on the motion to dismiss, and was still pending on December 10, 1962, when the Court dismissed the appeal.

3. Said dismissal was inconsistent with a ruling of the Court in the case of *Alice M. More* vs *Steve Urbano*, reported in the Connecticut Law Journal, Volume 24, No. 2, on November 13, 1962.

4. Said ruling of the Supreme Court is inconsistent with the law as recited in the case of *Schollfield Gear & Pulley Company* vs *Schollfield*, 70 Conn. at page 504, wherein it is stated that the Court, without any request for a finding, on its own motion may make a finding of facts.

5. The Defendant feels that the matter is of such importance involving the freedom of the Defendant, that the Court should hear further arguments concerning the Motion for Permission to Amend the Draft Finding, which motion the Court did not act upon.

The Defendant
By Monroe S. Gordon
His Attorney

ORDER

The above motion having been heard on the _____ day of _____, 1962, it is hereby ORDERED That the Motion to Reargue

By the Court

_____
Clerk

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1962

DONALD L. DUNCAN,
Petitioner,

vs

CONNECTICUT

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby extended to and including May 13th, 1963.

s/ JOHN M. HARLAN
Associate Justice of the Supreme
Court of the United States

Dated this 9th day of
April, 1963.

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1962

DONALD L. DUNCAN,

Petitioner,

vs

CONNECTICUT

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby extended to and including May 20th, 1963.

s/ JOHN M. HARLAN
Associate Justice of the Supreme
Court of the United States

Dated this 13th day of
May, 1963.